IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4945 of 1992

For Approval and Signature:

HONOURABLE MS.JUSTICE H.N.DEVANI

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	NO
5	Whether it is to be circulated to the civil judge ?	NO

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SHANTINATHJI JAIN DERASAR THROTRUSTEE JAGJIVAN TALAKSHI & 18 - Petitioner(s)

Versus

ADDL CHIEF SECRETARY (APPEALS) & 3 - Respondent(s)

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Appearance :

MR CH VORA for Petitioner
MS REETA CHANDARANA, AGP for Respondents : 1 - 3
MR DK NAKRANI for Respondents : 4

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CORAM : HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 23/08/2006

ORAL JUDGMENT

1. This petition challenges the order dated 15th November, 1990 / 2nd July, 1991 (Annexure-C)

passed by the Deputy Secretary, Revenue Department (Appeals), Government of Gujarat and seeks restoration of order dated 24th June, 1988 (Annexure-A) passed by the Mamlatdar (Inams Abolition), Nakhatrana.

2. The petitioner, a Trust, is the owner of agricultural land, admeasuring acres 6 and 22 gunthas, bearing old survey No.78, at present new survey No.126, situated in the sim of village Dhawada, Taluka Nakhatrana, District Kutch (hereinafter referred to as “the subject lands”). The petitioner made an application dated 12th May, 1988 under Section 3 of the Bombay Inams (Kutch Areas) Abolition Act, 1988, (The Act), seeking a declaration that the respondent No.4-Patel Punjabhai Dhanajibhai is not a tenant of the petitioner trust, with respect to the subject lands.

3. The said application was registered as Inams Case No.23 of 1988. After hearing the parties and considering the evidence on record, the Mamlatdar (Inams Abolition), Nakhatrana (hereinafter referred to as “the Mamlatdar”) by his order dated 24th June, 1988 declared that the respondent No.4 is not a tenant or butadar in respect of the subject lands.

4. Being aggrieved by the aforesaid order of the Mamlatdar, the respondent No.4 preferred an

appeal before the Deputy Collector, Nakhatrana (respondent No.2 herein). The Deputy Collector, after hearing the parties, by an order dated 30th December, 1989 held that under the provisions of Section 3 of the Act, against an order of an officer authorised by the State Government under sub-section (1) of Section 3, appeal would lie before the State Government under sub-section (2) thereof. In the circumstances, he rejected the appeal on the ground that the same has been presented before the wrong forum and directed that the appeal be preferred before the competent forum.

5. It is the case of the petitioner that, against the order dated 24th June, 1988 passed by the Mamlatdar, the respondent No.4 approached the respondent No.1 by way of Revision under sub-section (3) of Section 3 of the Act being Revision Application No.1 of 1990. That by an order dated 15th November, 1990, the said Revision Application was allowed and the order passed by the Mamlatdar was set aside. Being aggrieved by the aforesaid order passed by the respondent No.1, the petitioner has invoked the jurisdiction of this Court under Article 226 and 227 of the Constitution of India.

6. Heard Mr.C.H.Vora, learned advocate for the petitioner, Mr.D.K.Nakrani, learned advocate for the respondents No.4.1 to 4.6 and Ms.Reeta

Chandarana, learned Assistant Government Pleader for the respondents No.1, 2 and 3.

7. Mr.C.H.Vora, learned Advocate for the petitioner assailed the impugned order passed by the respondent No.1 on several grounds. It was submitted that the impugned order was bad in law on the ground of lack of jurisdiction as the Revisional Authority had no jurisdiction to entertain a Revision Application against an order passed under sub-section (1) of section 3 of the Act. Referring to the provisions of sub-section (2) of section 3 of the Act, it was pointed out that the said section provides that where any question arising out of any of the eventualities set out under sub-section (1), is decided by an officer so authorized by the State Government, any person aggrieved by such decision may file an appeal to the State Government within 90 days from the date of such decision. It was submitted that the statute itself provides for the forum and the remedy against an order passed under sub-section (1) of section 3 of the Act. That in the present case, the question that arose falls within the purview of sub-clause (iii) or sub-clause (iv) of sub-section (1) of section 3 of the Act viz., as to whether the respondent No.4 is a butadar or ret-butadar or as to whether the respondent No.4 is a tenant. It was submitted that the only remedy against the order passed under sub-section (1)

of section 3 is by way of appeal as envisaged under sub-section (2) of section 3. It was contended that the Act has not made any provision for revision against an order passed under sub-section (1) of section 3 of the Act. In the circumstances, the Revision Application before the respondent No.1, State Government, was incompetent. Accordingly, the order passed by the respondent No.1 in exercise of revisional jurisdiction was bad in law as the said authority had no jurisdiction to entertain the Revision Application and allow the same. It was submitted that lack of jurisdiction on the part of the Revisional Authority goes to the root of the matter, therefore, the impugned order is required to be quashed and set aside on that count itself.

7.1 It was next submitted that the revisional proceeding was barred by delay in initiation thereof, in that, the order of the Mamlatdar was made on 24th June, 1988, whereas the notice by the Revisional Authority was issued in January 1990 which was after a period of more than one and half years from the date of the order of the Mamlatdar. It was submitted that under sub-section (3) of section 3 of the Act, the Government can exercise powers of suo moto revision after the expiry of the period for appeal, but not later than one year from the date of the decision. In the circumstances, the revisional proceeding which had

been initiated after a period of more than one year and ninety days from the date of the order was barred by the limitation.

7.2 It was further submitted that despite the fact that the Revision Application was barred by limitation, no application for condonation of delay had been made by the respondent No.4. In the circumstances, the Revisional Authority was not justified in entertaining the application which admittedly was made beyond the period of limitation without an application for condonation of delay.

7.3 On merits, it was contended that the respondent No.4 had not led any evidence in support of his claim of tenancy rights over the subject lands. It was submitted that section 6 as well as section 7 of the Act provide for confirmation of occupancy rights in different contingencies. If a person holding any land comprised in an Inam, is in possession of a butadar, ret-butadar or is holding it as a tenant, such person is required to pay occupancy price to the State Government as prescribed under the said provision. It was submitted that, despite the fact that the respondent No.4 claims to be a tenant prior to the year 1958, he has not paid the occupancy price either under section 6 or section 7 of the Act. It was submitted that to substantiate his claim to tenancy, the respondent No.4 was required to have

made an application under section 6 or section 7 of the Act and paid the occupancy price prescribed under the said provisions; that as the respondent no.4 has not paid any occupancy price, no right can be said to have been created in his favour under the Act. It was submitted that the time limit for payment of occupancy price under the aforesaid provisions has been extended from time to time, however, even within the extended period, the respondent No.4 has not bothered to pay the occupancy price, hence, there is no reason to hold that the respondent No.4 is an occupant.

7.4 It was urged that reliance placed by the Revisional Authority upon the Promulgation Entry No.39 dated 25th November, 1959 is misplaced. It was argued that the Act requires payment of occupancy price within the stipulated period, hence, mere entry in the revenue record would not create any right in favour of the respondent No.4. It was submitted that there is no obligation on the part of any of the authorities to call upon any person to make payment of occupancy price, hence the say of the respondent No.4 that he was willing to pay the occupancy price if called upon to do so, cannot be accepted. It was pointed out that the fact that the respondent No.4 had not made any application for conferment of occupancy rights under the provisions of the Act has not been controverted or denied before any of the authorities.

7.5 Referring to the averments made in sub-paragraph (5) of paragraph 3 of the petition, it was submitted that the impugned order passed by the respondent was in breach of the principles of natural justice because the petitioner has been denied an opportunity to produce on record documentary evidence, which would throw light on the correct factual position on the flimsy ground that the original record has not been produced. It was submitted that the petitioner had produced xerox copies of the Village Form No.7/12 pertaining to the subject lands before the Revisional Authority, however, in view of the objection raised by the respondent No.4, the petitioner was not permitted to produce the said evidence.

7.6 Mr.Vora drew the attention of the Court to the findings recorded by the Revisional Authority, to submit that the said authority had merely accepted the contentions raised by the learned Advocate for the respondent NO.4, without giving any independent reasoning. Attention was drawn to the contentions raised by the learned Advocate for the respondent No.4, wherein it was contended that the Mamlatdar had not recorded depositions of the parties and had proceeded on the basis of statements of the parties whereby no opportunity of cross examination had been given. It had been alleged that due procedure as required under law

had not been followed and that the applicant being ignorant of the provisions of law, the Mamlatdar had taken into consideration inadmissible evidence and had thereby abused his powers while passing the order dated 24th June, 1988. It was submitted that once the Revisional Authority had accepted the aforesaid contentions regarding misuse of powers by the Mamlatdar, the Revisional Authority ought to have been remanded the matter to the Mamlatdar to decide the case *denovo* after recording evidence and giving the parties sufficient opportunity of presenting their case.

7.7 In conclusion, it was submitted that the order passed by the Mamlatdar is just, legal and proper and that the Revisional Authority was not justified in setting aside the same.

8. Learned Advocate, Mr.D.K.Nakrani for the respondent No.4 submitted that the Deputy Secretary who had exercised the power of revision was the very same authority who had the power to entertain an appeal under the provisions of sub-section (2) of section 3 of the Act. It was submitted that respondent No.4 had preferred an appeal against the order of the Mamlatdar before the respondent No.1 who is empowered to exercise both appellant as well as revisional powers. It was pointed out that the appeal preferred by the respondent No.4 had been entertained as a Revision Application by the

said authority. In the circumstances, there being no fault on the part of the respondent No.4, he cannot be non-suited merely because the competent authority has entertained the appeal preferred by him as a Revision Application.

8.1 Insofar as the contention regarding the application being beyond the period of limitation is concerned, it was submitted that the petitioner had been bonafide pursuing remedy of appeal before the Deputy Collector, Nakhatrana. The said appeal had been preferred within a period of ninety days as prescribed under sub-section (2) of section 3 of the Act. In the circumstances, the time consumed in pursuing the remedy before the Deputy Collector is required to be excluded keeping in mind the provisions of section 14 of the Limitation Act, as the petitioner was bonafide pursuing his remedy before another forum. Reliance was placed upon a decision of the Apex Court in the case of *National Aluminium Co. Ltd. v. Pressteel & Fabrications (P) Ltd. and another*, (2004) 1 SCC 540.

8.2 It was argued that the promulgation entry No.39 was made on 25th November, 1989 and formed part of the Revenue Record all these years, however, the petitioner trust had never challenged the same. It was submitted that now under the guise of the proceeding under sub-section (1) of section 3 of the Act, the said entry was being

indirectly challenged, hence, the same was hopelessly time barred.

8.3 Learned advocate for the respondent No.4 raised a technical objection that the petitioner being a trust is required to obtain the permission of the Charity Commissioner before initiating any proceeding before any authority. It was submitted that in the present case, the petitioner has failed to obtain any such permission. Hence, the petitioner was not entitled to prefer the proceeding before the Mamlatdar as well as before this Court.

8.4 It was submitted that original revenue record or certified copies thereof have not been produced by way of documentary evidence before the Revisional Authority, in the circumstances, the Revisional Authority was justified in rejecting the prayer of the petitioner for production of additional evidence on record in the revisional proceeding.

9. The learned Assistant Government Pleader supported the reasoning adopted by the revisional authority in the impugned order.

10. Upon considering the rival submissions and perusal of the record of the petition as well as the record and proceeding of Revision Application No.SRD/Kutch/Inam/1/90, this Court

is of the view that insofar as the contention as regards the exercise of revisional powers by the authority being beyond jurisdiction is concerned, the same does not merit acceptance. Upon perusal of the record and proceedings of the Revision Application, it is found that the respondent No.4 had in fact preferred an appeal against the order of the Mamlatdar. However, the respondent No.1, who appears to be both the appellate as well as the revisional authority has entertained the same as a Revision Application. In the circumstances, the respondent No.4 cannot be non-suited without any fault on his part on the ground that the concerned authority had exercised revisional powers instead of appellate powers.

10.1 Insofar as the delay in challenging the order dated 24th June, 1988 of the Mamlatdar is concerned, the contention of the learned advocate for the respondent No.4 that, as the respondent No.4 was bonafide pursuing his remedy before another forum, the said period is required to be excluded while calculating the period of limitation, merits acceptance. Section 14 of the Limitation Act, 1963 provides that, in computing the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in court of first instance, or in a court of appeal, against the defendant, shall

be excluded, where the proceeding is founded upon the same cause of action and is prosecuted in good faith in a court which, from defect of jurisdiction, or other cause of alike nature, is unable to entertain it. The respondent No.4 had admittedly preferred appeal before the Deputy Collector within the prescribed time limit of ninety days; upon the Deputy Collector refusing to entertain the appeal and relegating the respondent No.4 to the proper authority namely the State Government, the respondent No.4 had without any delay approached the State Government by way of appeal. In the circumstances, in the light of the provisions of Section 14 of the Limitation Act, it cannot be said that the appeal/revision was barred by delay as is sought to be contended on behalf of the petitioner.

10.2 The case of the petitioner before the respondent No.1 was that the subject lands have been given to the respondent No.4 for cultivation thereof from Jeth Sud 5 of Samvat 2013, that is, from 1958. In support of its case, reliance was placed upon a document executed in Samvat 2013 to show that prior thereto, the respondent No.4 was not in possession of the subject lands. However, the same was not accepted as evidence as the respondent No.1 was of the view that under the provisions of Section 58 of the Evidence Act, the original record is required to be produced. Moreover, the copies of the Revenue Record

produced by the petitioner in support of its say that the respondent No.4 was not in possession of the subject lands prior to 1958 have also been discarded as not being in consonance with the provisions of the Evidence Act. Whereas it was the case of the respondent No.4 that the Mamlatdar had not recorded any evidence; had not given any opportunity of cross-examination, nor had he granted reasonable opportunity of hearing.

10.3 From the facts noted above, it appears that, at both stages, i.e., before the first authority as well as before the revisional / appellate authority, reasonable opportunity of hearing and production of evidence has not been granted to the parties.

10.4 Moreover, as can be seen from the impugned order of respondent No.1, in the opening paragraph, the respondent No.1 has noted as to what is challenged in the application. In the second paragraph, the proceedings prior to the date of hearing are recorded. In the third and fourth paragraphs, the submissions made by learned Advocate for the respondent No.4 are recorded, and in the fifth paragraph, the submissions made by the learned Advocate for the petitioner are recorded. Thereafter, the submissions made in rejoinder by the learned Advocate for the respondent No.4 are recorded wherein he has enumerated the reasons why the contentions raised

by the learned Advocate for the petitioner should not be accepted. Insofar as the findings recorded by the respondent No.1 are concerned, the same when translated into English read as under :

> *"Keeping in view the facts of the arguments of the learned Advocates for both the sides and the facts of the record produced by the Court below, the following facts emerge :*
>
> *(1)The name of Punja Dhanji had been entered as ret butadar vide Mutation Entry No.39 dated 25.11.89 which has been certified during promulgation. Hence, he appears to be the occupant.*
>
> *(2)The Trust has not raised any objection against Mutation Entry No.39.*
>
> *(3)The contentions raised by the learned Advocate for the applicant are accepted.*
>
> *In the aforesaid circumstances, the following order is passed."*

The respondent No.1 has thereafter allowed the Revision Application and set aside the order dated 24th June, 1988 passed by the Mamlatdar (Inams), Nakhatrana. It is, thus, apparent that the respondent No.1 has not recorded any independent findings while passing the impugned order.

10.5 Besides, as the respondent No.1 has accepted the contentions raised by the learned Advocate for the respondent No.4 in *toto*, it would be necessary to examine the said contentions in the context of

the submission made by the learned Advocate for the petitioner that once the authority has come to the conclusion that the Mamlatdar had misused or abused his powers while deciding the petitioner's application under Section 3(1) of the act, the respondent No.1 ought to have remanded the matter to the first authority to conduct the proceedings *denovo* in accordance with the procedure laid down under the statute. The learned Advocate for the respondent No.4 had *inter alia* contended before the respondent No.1 that the Mamlatdar has not followed due procedure during the course of the proceedings before him. Depositions have not been recorded. The applicant being ignorant of the provisions of law, the Mamlatdar has taken into consideration inadmissible evidence and thereby, abused his powers. That, as such, steps are required to be taken against such misuse of power by the authority. That, the Mamlatdar, after taking the application on hand, has not recorded evidence and has proceeded on the basis of the statements made by the parties and has without granting opportunity of cross examination or proper opportunity of hearing taken a wrong decision based on presumptions and surmises.

10.6 Upon perusal of the aforesaid contentions raised on behalf of the respondent No.4, which have been accepted by the respondent No.1, this Court is of the view that the above contention raised by the learned Advocate for the petitioner

merits acceptance. Furthermore, considering the fact that both the sides have grievance regarding not being given proper opportunity of hearing and production of evidence at some stage of the proceedings, it is deemed just and proper, in the interest of justice, to remand the matter to the first authority viz., the Mamlatdar (Inams Abolition), Nakhatrana for deciding the same *de novo.*

11. For the reasons stated hereinabove, the petition is partly allowed. The impugned order dated 15th November, 1990, passed by the Deputy Secretary, Revenue Department (Appeals) is hereby quashed and set aside. Inam Case No.23 of 1988 before the Mamlatdar (Inams Abolition), Nakhatrana, is restored to file. The Mamlatdar (Inams Abolition), Nakhatrana shall decide the matter afresh in accordance with law, after giving the parties reasonable opportunity to adduce evidence in support of their case and after affording reasonable opportunity of hearing. Rule is made absolute to the aforesaid extent. The parties shall bear their own costs.

(H.N.DEVANI, J.)

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